

**FILED**

IN THE COURT OF APPEALS OF TENNESSEE

**May 21, 1996**

**Cecil Crowson, Jr.**  
Appellate Court Clerk

EARL GENE HESS, JR.,	:	ANDERSON CHANCERY
Individually, and	:	03A01-9509-CH-00303
A/N/F FOR MINORS	:	
ELIZABETH GRACE HESS and	:	
EARL GENE HESS, JR.	:	
	:	
Plaintiff-Appellant	:	
	:	
vs.	:	HON. WILLIAM E. LANTRIP
	:	CHANCELLOR
	:	
PATRICIA LOUISE HESS	:	
	:	
Defendant-Appellee	:	AFFIRMED AND REMANDED

EARL GENE HESS, APPELLANT, PRO SE

DAIL R. CANTRELL, WITH CANTRELL, PRATT & VARSALONA, OF  
CLINTON, TENNESSEE, FOR APPELLEE

O P I N I O N

Sanders, Sp.J.

This case is a classic example of a husband's  
abusing the legal process to harass his ex-wife.

Between May and June, 1995, the Plaintiff-Appellant  
filed seven documents consisting of pro se complaints,

petitions, and motions, all of which were long, disconnected and lacking in stating a cause of action upon which relief could be granted. To summarize the content of each document would serve only to lengthen this opinion. The documents consisted of the following: (1) On May 5, 1995, he filed "Complaint for Abuse and Neglect of Children, and Contempt of Court"; (2) May 17, "Motion to Dismiss Defendant's Subterfuge"; (3) June 12, "Motion For Contempt of Court for Denial of Visitation"; (4) June 30, "Motion for Ruling on Violation of Tennessee Supreme Court Code of Judicial Conduct"; (5) June 30, "Motion for Grandparents Visitation Rights"; (6) June 30, "Motion for Summary Judgment"; (7) June 30, Motion to Dissolve Permanent Restraining Order".

The Defendant filed a response to each of the motions, together with a motion to dismiss. The motions to dismiss were predicated either on TRCP Rule 12.02, res judicata, or former determination of the issue raised.

Upon hearing the complaint and motions, the court entered five separate orders dismissing the complaint and motions. As pertinent, the court said: "The Court has reviewed the petitioner's Complaint for Abuse and Neglect of Children and respondent's Motion to Dismiss Complaint for Abuse and Neglect of Children. The Court finds that the Complaint is non-specific as to any alleged abuse and/or neglect, and rather, demands review and modification of numerous terms of a prior divorce decree. The doctrine of res judicata requires that these demands having already been resolved at trial, or having been made in petitioner's Motions

under another case now pending, Case No. 94CH1770, may not be retried by this Court.

"The Court has reviewed the 'Motion to Dismiss Defendant's Subterfuge' filed by Mr. Hess, which the Court interprets as being Mr. Hess's Answer to Defendant's Motion to Dismiss Complaint for Abuse and Neglect of Children. As stated, these divorce issues, having already been litigated, are not reviewable under a different cause of action.

"The Court has reviewed the Motion for Contempt of Court for Denial of Child Visitation filed June 12, 1995 and the Answer and Motion to Dismiss filed June 14, 1995. The Court finds that the prior divorce decree is res judicata as to these issues. Moreover, the petitioner has mis-stated the terms of said divorce decree, as well as the visitation schedule and any alleged grandparents' rights in his Motion for Contempt of Court. Each and every item in petitioner's prayer for relief, Motion for Contempt of Court for Denial of Child Visitation, has been previously addressed, either by the Court during the divorce proceedings or subsequently by Orders of the Court."

The court found motions (4) through (6) were not well taken and denied the motions. He also found motion (7) should be denied because of res judicata.

The Plaintiff has appealed, saying the court was in error.

We cannot agree, and affirm in accordance with Court of Appeals Rule 10(a).<sup>1</sup>

The Appellee, in her brief, insists the appeal is frivolous and taken solely for delay. We agree.

"Successful litigants should not have to bear the expense and vexation of groundless appeals." **Chaille v. Warron**, 699 S.W.2d 801 (Tenn.App.1985); **Davis v. Gulf Insurance Group**, 546 S.W.2d 583 (Tenn.1977).

The case is remanded for the trial court to fix damages pursuant to TCA § 27-1-122. The cost of this appeal is taxed to the Appellant.

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Clifford E. Sanders, Sp.J.

CONCUR:

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Herschel P. Franks, J.

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<sup>1</sup>. AFFIRMANCE WITHOUT OPINION.--The Court, with the concurrence of all judges participating in the case, may affirm the action of the trial court by order without rendering a formal opinion when an opinion would have no precedential value and one or more of the following circumstances exist and are dispositive of the appeal:

(1) the Court concurs in the facts as found or as found by necessary implication by the trial court.

(2) there is material evidence to support the verdict of the jury.

(3) no reversible error of law appears.

Such cases may be affirmed as follows: "Affirmed in accordance with Court of Appeals Rule 10(a)".

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Don T. McMurray, J.